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8 *Attorney for Plaintiffs*

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KLAMATH-SISKIYOU WILDLANDS CENTER, )  
CENTER FOR BIOLOGICAL DIVERSITY, and )  
KLAMATH FOREST ALLIANCE, )  
Plaintiffs, ) Case No. 3:13-cv-3717-NC  
v. )  
NATIONAL OCEANIC AND ATMOSPHERIC )  
ADMINISTRATION, NATIONAL MARINE )  
FISHERIES SERVICE, and UNITED STATES )  
FISH AND WILDLIFE SERVICE, )  
Defendants, )  
and )  
FRUIT GROWERS SUPPLY COMPANY, )  
Defendant-Intervenor. )  
\_\_\_\_\_  
Pursuant to Civil Local Rule 7-12, this stipulation is entered into by and between  
Plaintiffs Klamath-Siskiyou Wildlands Center, Center for Biological Diversity, and Klamath  
Forest Alliance and Federal Defendants National Oceanic and Atmospheric Administration,

1 National Marine Fisheries Service, and U.S. Fish and Wildlife Service. Plaintiffs and Federal  
2 Defendants hereby agree and stipulate as follows:

3 WHEREAS, Plaintiffs' lawsuit challenged Federal Defendants' issuance of Incidental  
4 Take Permits to Defendant-Intervenor Fruit Growers Supply Company under Section 10 of the  
5 Endangered Species Act, *see* 16 U.S.C. § 1539(a)(2)(B);

6 WHEREAS, The Court granted Plaintiffs' cross-motion for summary judgment in part  
7 and denied the motion in part;

8 WHEREAS, Plaintiffs filed a Motion for Attorneys' Fees, Costs, and Other Litigation  
9 Expenses on August 27, 2015. Doc. No. 107;

10 WHEREAS, The parties have reached a settlement agreement that obviates the need for  
11 further litigation of Plaintiffs' motion for fees and costs;

12 NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS  
13 FOLLOWS:

14 1. Plaintiffs are entitled to an award of costs and attorneys' fees under the  
15 Endangered Species Act, 16 U.S.C. § 1540(g). Federal Defendants shall pay Plaintiffs a total of  
16 four hundred and eighty thousand dollars (\$480,000.00) for attorneys' fees, costs, and other  
17 litigation expenses for this lawsuit.

18 2. Federal Defendants shall make the payment required by Paragraph 1 and the  
19 agreed order below by electronic funds transfer to the client trust account of the Western  
20 Environmental Law Center, 1216 Lincoln Street, Eugene, Oregon 97401.

21 3. Plaintiffs agree to furnish Federal Defendants with the information necessary to  
22 effectuate the payment required by Paragraph 1 of this stipulation and the agreed order below.  
23 Federal Defendants agree to submit all necessary paperwork for the processing of the attorneys'  
24

1 fees award to the Department of the Treasury's Judgment Fund Office within ten (10) business  
2 days of entry of the Order below by the court or the receipt of the information described in this  
3 Paragraph, whichever is later.

4 4. Plaintiffs agree to accept Federal Defendants' payment of \$480,000.00 in full  
5 satisfaction of any and all claims for attorneys' fees and costs of litigation incurred in this matter  
6 to date. Plaintiffs agree that receipt of this payment from Federal Defendants shall operate as a  
7 release of Plaintiffs' claims for attorneys' fees and costs in this matter to date.

8 5. Plaintiffs reserve the right to seek additional fees and costs incurred subsequent to  
9 this Stipulation arising in any future litigation or continuation of the present action. Federal  
10 Defendants reserve the right to contest fees claimed by Plaintiffs or Plaintiffs' counsel, including  
11 hourly rates and the number of hours billed, in any future litigation or continuation of the present  
12 action. Further, this Stipulation as to attorneys' fees and costs has no precedential value and  
13 shall not be used as evidence in any other attorneys' fees litigation.

14 6. Nothing in this Stipulation shall be interpreted as, or shall constitute, a  
15 requirement that Federal Defendants are obligated to pay any funds exceeding those available, or  
16 take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other  
17 appropriations law.

18 7. This Stipulation shall be binding on the parties and their successors, agents,  
19 designees, employees, and all those acting by and through their authority.

20 8. The parties agree that this Stipulation was negotiated in good faith and that this  
21 Stipulation constitutes a resolution of claims that were denied and disputed by the parties. By  
22 entering into this Stipulation, the parties do not waive any claim or defense.

1       9.     The undersigned representatives of each party certify that they are fully  
2     authorized by the parties they represent to agree to the terms and conditions of this Stipulation  
3     and do hereby agree to the terms herein.

4       10.    The parties hereby jointly and respectfully request that the Court review and  
5     approve the terms of this stipulation, and retain jurisdiction to enforce its terms. See Kokkonen  
6     v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994).

7       Respectfully submitted this 20th day of November, 2015.

8                    /s/ John R. Mellgren  
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15                    *Attorney for Plaintiffs*

16                    JOHN C. CRUDEN  
17    Assistant Attorney General  
18    U.S. Department of Justice  
19    Environment & Natural Resources Division  
20    SETH M. BARSKY, Chief  
21    KRISTEN L. GUSTAFSON, Assistant Chief

22                    /s/ Travis J. Annatoyn  
23    TRAVIS J. ANNATOYN,  
24    Trial Attorney  
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25                    Attorneys for Federal Defendants

## **E-FILING ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), I attest that Travis J. Annatoyn has concurred in the filing of this document.

/s/ John R. Mellgren  
JOHN R. MELLGREN, Oregon Bar # 114620

*Attorney for Plaintiffs*

## **ORDER**

The above STIPULATION concerning attorneys' fees, costs, and other litigation expenses in the above-captioned litigation is hereby APPROVED and GRANTED.

1. Federal Defendants shall pay Plaintiffs \$480,000.00 in full satisfaction of any and all claims for attorneys' fees, costs, and other litigation expenses in the above-captioned litigation to date;
2. Federal Defendants shall submit all necessary paperwork for the processing of the attorneys' fees award to the Department of the Treasury's Judgment Fund Office within ten (10) business days of entry of this Order or the receipt of the required information from Plaintiffs, as described in Paragraph 3 of the Stipulation;
3. The Court shall retain jurisdiction to enforce the terms of the above Stipulation and this Order, see Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994);
4. This Order resolves Plaintiffs' Motion for Attorneys' Fees, Costs, and Other Litigation Expenses, Doc. No. 107.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 20, 2015

